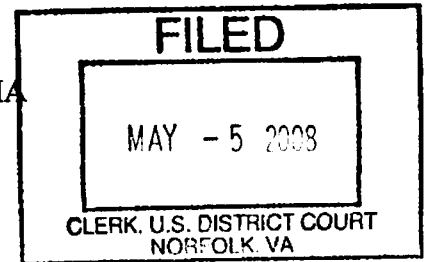


**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**



**MACK STEPHENSON, #351053,**

**Petitioner,**

**v.**

**ACTION NO. 2:07cv400**

**GENE M. JOHNSON, Director of the  
Virginia Department of Corrections,**

**Respondent.**

**FINAL ORDER**

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions in the Suffolk County Circuit Court for aggravated sexual battery, inanimate object sexual penetration and indecent liberties with a child. Petitioner was sentenced on October 13, 2005, to serve a total of fifty years in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. Report of the Magistrate Judge was filed on February 21, 2008, recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On April 9, 2008, the Court received Petitioner's Objections to the Report and Recommendation. Petitioner asserts his trial counsel was ineffective for failing to file a direct appeal of his convictions, and requests his sentencing transcript as well as records from the jail which would show his attorney did not visit him in the months following his sentencing. This does not excuse



petitioner's failure to file a habeas petition with either the state court or this court within the federal one-year limitations period.

The Court, having reviewed the record and examined the objections filed by the petitioner to the United States Magistrate Judge's Report, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate Judge filed February 21, 2008. It is, therefore, ORDERED that the petition be DENIED and DISMISSED as barred by the statute of limitations. It is further ORDERED that judgment be entered in favor of the respondent.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within 30 days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to petitioner and counsel of record for the respondent.

  
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**Walter D. Kelley, Jr.**  
**United States District Judge**   
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia  
May 5, 2008